

REMARKS

Claims 1-10 are pending. Claims 1, 2 and 4-8 stand allowed. The Office Action rejects claim 3. New claims 9 and 10 have been added.

The Office Action rejects claim 3 under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,891,568 to Glenn. This rejection is respectfully traversed.

The Office Action asserts a creative and incorrect construction of certain claim terms. Specifically, the claim term “first time interval” is creatively and incorrectly asserted. This claim term “first time interval” must be construed within the context of the claim limitation “operating a first sensor of a camera to integrate a first charge over a first time interval” (emphasis added).

A. The Office Action erroneously construes the “first time interval” to include: (1) the time when reflective sector 663 of Glenn ‘568 has been rotated into the light path, (2) followed by the time when transmission sector 661 of Glenn ‘568 has been rotated into the light path, and (3) then followed by the time when reflective sector 664 of Glenn ‘568 has been rotated into the light path.

1. The Question Presented

The question presented here is whether the claim limitation “operating a first sensor of a camera to integrate a first charge over a first time interval” can include the time when transmission sector 661 of Glenn ‘568 has been rotated into the light path so that imaging light is not reflected from reflective sector 663 or 664 onto the first sensor but instead passes through transmission sector 661 onto the second sensor. Restated another way, when no light impinges on the first sensor, can it be said that the first sensor is operated “to integrate a charge” as specified in claim 3?

2. The Law of Claim Construction

To answer this question, we must first consider the law of claim construction. Claim terms are to mean what they would mean to a person of ordinary skill in the art at the time of the invention. One must determine how such an ordinarily skilled person would understand the claim in the context of the particular technology and the

description in the specification. The inquiry into claim meaning is directed to ascertaining "what one of ordinary skill in the art at the time of the invention would have understood the term to mean." *Markman v. Westview Instrument, Inc.*, 52 F.3d 967, 986 (Fed. Cir 1995); *Bell Ad. Network Servc., Inc. v. Covad Communications Group*, 262 F.3d 1258, 1267 (Fed. Cir 2001).

The M.P.E.P. instructs that the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. M.P.E.P. §2111; *see also In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). "[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art...." *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed.Cir.1997). "It is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, ... and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art" (emphasis added). *In re Bond*, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed.Cir.1990).

As to prior art references, prior art references may be "indicative of what all those skilled in the art generally believe a certain term means ... [and] can often help to demonstrate how a disputed term is used by those skilled in the art." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584, 39 USPQ2d 1573, 1578-79 (Fed.Cir.1996). However, the interpretation of claim terms by the Patent Office should not be so broad that it conflicts with the meaning given to identical terms in other patents from the art to which the claimed subject matter most nearly pertains. See *In re Cortright*, 165 F.3d at 1359.

As to dictionaries and treatises, *Texas Digital Systems v. Telegenix*, 308 F.3d 1193, 64 USPQ2d 1812 (Fed. Cir. Oct. 16, 2002) decided that dictionaries and treatises should be regarded as "unbiased reflections of common understanding not influenced by expert testimony or events subsequent to the fixing of the intrinsic recorded by the grant of the patent, not colored by the motives of the parties, and not inspired by litigation." In short, the *Texas Digital* case relied on extrinsic evidence in the form of dictionaries since such definitions are unbiased. However, "a common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty." *Renishaw*

*PLC v. Marposs Societa ' per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998).

However, claims must be construed within the context of the specification. After the U.S. Court Of Appeals For The Federal Circuit decided *Philips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*), and decided several following cases, the law of claim construction placed new emphasis on interpreting claims in the context of the specification, and with diminished reliance on dictionaries. Prior to the *Philips* case, the law of claim construction relied, at least in part, on dictionaries as instructed by the *Texas Digital* case. However, after the decision in the *Philips* case, and several cases following, the law of claim construction requires that claims be construed to have the meanings that they would have to persons of ordinary skill in the art with reference to the specification. After the decision in the *Philips* case, it is necessary to look at the disclosure of the specification to properly construe the claim term.

In particular, *Philips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*), emphasized that the proper judicial construction of a claim and its terms is from the viewpoint of a person of ordinary skill in the field of the invention. A court must determine how such a person would understand the claim in the context of the particular technology and the description in the specification, with due reference to the prosecution history. See also, *On Demand Machine Corp. v. Ingram Industries, Inc. et al.*, Slip Op. 05-1074, 1075, 1100, pages 7-8 (Fed. Cir., decided March 31, 2006) (“Thus the court in Philips, resolving conflict, stressed the dominance of the specification in understanding the scope and defining the limits of the terms used in the claim. 415 F.3d at 1313.” (emphasis added)). See also, *Dorel Juvenile Group v. Graco Children’s Products*, Slip Op. 05-1026, page 5 (Fed. Cir., decided November 7, 2005) (The court will “test the scope of claim language with primary reference to the specification, of which the claims are a part, Phillips v. AWH Corp., 415 F.3d 1303, 1315-17 (Fed. Cir. 2005) (*en banc*).” (emphasis added)). See also, *Biagro Western Sales v. Grow More*, Slip Op. 04-1414, pages 7-8 (Fed. Cir., decided September 13, 2005) (“As our recent en banc decision in Phillips v. AWH Corp. reaffirmed, the words of a claim are generally given their ordinary and customary meaning, which is the meaning the term would have to a person of ordinary skill in the art at the time of the invention. 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (*en banc*) (citing *Innova*, 381 F.3d at 1116). Such a person is deemed to read the claim term in the context of the entire patent, including the other claims and the

written description. *Id.* at 1313." (emphasis added)). See also, *Aquatex Industries v. Techniche Solutions*, Slip Op. 05-1088, page 9 (Fed. Cir., decided August 19, 2005) ("To ascertain the meaning of a disputed claim term "the words of a claim are generally given their ordinary and customary meaning," as would be understood by "a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Philips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*). The specification is of central importance in construing claims because "the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* at \*24.").

### 3. Applying The Law Of Claim Construction To Present Claim 3

When no light impinges on the first sensor, an ordinarily skilled person would understand that the first sensor is not being operated to integrate a charge. The Patent Office is not at liberty to apply any meaning to the phrase "first time interval." Instead, the Patent Office is required to construe claims in the context of the specification and be guided by the law of claim construction as discussed above. In particular, the claim construction asserted by the Office Action cannot be contrary to the disclosure of the application.

As discussed above, the proper construction of a claim and its terms is from the viewpoint of a person of ordinary skill in the field of the invention. The Patent Office should determine how such an ordinarily person would understand the claim in the context of the particular technology and the description in the specification, with due reference to the prosecution history.

The specification discusses multiple embodiments of the invention. For example, on page 17, in lines 23-30 the specification discloses

Referring to FIG. 21, "Region I of timing diagram 1100 shows the charge integration in first imaging sensor 14 while the image light reflects from a central area of first reflection sector 122 [FIG. 3] such that every pixel on first imaging sensor 14 is illuminated. Charge is integrated in first imaging sensor 14 while the image light reflects from first reflection sector 122 onto first imaging sensor 14. As second rotatable structure 120 rotates first reflection sector 122 moves out of the objective path of lens 12 while first transmission sector 126 moves into the objective path of lens 12. Fewer pixels of first imaging

sensor 14 are illuminated, as shown by Region II in timing diagram 1100.

In a further example, on page 18, in lines 6-10, the specification discloses

Similarly, for second imaging sensor 16, timing diagram 1150 shows the charge integration in second imaging sensor 16 while the image light passes through an increasing portion of first transmission sector 126 (Region II) until the image light passes through a central area of first transmission sector 126 such that every pixel on second imaging sensor 16 is illuminated (Region III).

In yet another example, on page 18, in lines 21-25, the specification discloses

Once first opaque sector 124 has moved completely into the objective path of lens 12, the image light no longer reflects onto first and second imaging sensors 14 and 16, as shown by region V in timing diagram 1150. Charge is transferred (Xfer 1) from both first and second imaging sensors 14 and 16 while first opaque sector 124 prevents the image light from impinging on the imaging sensors 14 and 16.

From the viewpoint of a person of ordinary skill in the field of the invention in the context of the particular technology and the description in the specification, present claim 3 is understood to preclude and bar the Office Action's interpretation of the claim limitation "operating a first sensor of a camera to integrate a first charge over a first time interval."

The Office Action maintains that the "first time interval" includes the time when transmission sector 661 of Glenn '568 has been rotated into the light path so that imaging light is not reflected from reflective sector 663 or 664 onto the first sensor but instead passes through transmission sector 661 onto the second sensor. But this is contrary to the patent specification. The claim construction asserted by the Office Action is inconsistent with the specification. A claim construction "that flies in the face of the patent disclosure is undeserving of fealty." *Renishaw PLC v. Marposs Societa 'per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998).

#### 4. Conclusion

Any claim construction that holds "the first time interval" to include the time when the transmission section (661) is disposed in the light path flies in the face of the disclosure of the specification. Proper claim construction compels preclusion of the claim construction asserted in the Office Action. Glenn '568 does not disclose that the first time

interval includes the time when the transmission section (661) is in the light path. Withdrawal of the rejection of claim 3 is respectfully requested.

B. Anticipation is a strict standard. "A claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Glenn '568 does not disclose "operating a first sensor of a camera to integrate a first charge over a first time interval" (emphasis added) as specified in claim 3. "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Withdrawal of the rejection of claim 3 is respectfully requested.

C. Conclusion

In view of the above amendments and remarks, the application is respectfully believed to be in condition for allowance. Prompt reconsideration and allowance are courteously requested. If the examiner believes that any further action is needed for allowance, the examiner is invited to telephone the undersigned applicant representative at the number indicated below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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Attorney Docket No.: DALSAINC-0045

Date: July 10, 2006